

## **Exhibit 9**

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

--oOo--

HEARTS ON FIRE COMPANY, LLC )  
)  
Plaintiff, )  
)  
vs. ) No. 04 12258-JLT  
)  
EIGHTSTAR DIAMOND COMPANY and )  
GRS JEWELERS, INC., )  
)  
Defendants. )  
\_\_\_\_\_ )

DEPOSITIONS OF  
RICHARD VON STERNBERG and DANA VON STERNBERG  
(30(b)6 witnesses)

\_\_\_\_\_  
Tuesday, December 6, 2005

REPORTED BY: RENEE COMBS WOLF, RMR COR 11867 JOB 375292

*Richard von Sternberg*

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14:08:29 1 trademarks, right?

14:08:30 2 A. Yes.

14:08:31 3 Q. Now, you're aware that in May, a couple months  
14:08:35 4 after this of '04, that Hearts on Fire initiated an  
14:08:40 5 action against E.R. Sawyer for use of the Hearts on Fire  
14:08:43 6 trademark, "the world's most perfectly cut diamond," to  
14:08:45 7 promote EightStar's goods?

14:08:48 8 A. I couldn't again tell you the exact date, but  
14:08:52 9 I'm aware of that action, yes.

14:09:07 10 Q. When did you become -- when were you first  
14:09:09 11 aware of the use by E.R. Sawyer of the Hearts on Fire  
14:09:13 12 trademark?

14:09:17 13 MR. PHILLIPS: Object to the form.

14:09:19 14 THE WITNESS: When was I first aware?

14:09:21 15 MR. SHERMAN: Yeah.

14:09:21 16 THE WITNESS: My first awareness was when we  
14:09:23 17 were made aware of the action.

14:09:27 18 MR. SHERMAN: Q. So who made you aware of the  
14:09:30 19 action?

14:09:35 20 A. Good one. I don't recall.

14:09:52 21 Q. And do you know whether or not you were made  
14:09:57 22 aware before the Sawyer lawsuit was filed, in other  
14:10:10 23 words, was there already a -- was there already a  
14:10:13 24 lawsuit when you learned of the use by E.R. Sawyer of  
14:10:16 25 the Hearts on Fire trademark?

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14:10:19 1 A. Was there already a lawsuit?

14:10:22 2 Q. Right.

14:10:22 3 A. Before I knew of the use of --

14:10:24 4 Q. Right.

14:10:32 5 A. I don't know if I understand your question.

14:10:34 6 Because in the last question you asked me when I was

14:10:36 7 aware of it, and then I said I became aware of it, the

14:10:39 8 action. I said the action. The lawsuit, are they the

14:10:42 9 same thing?

14:10:43 10 Q. If that's when you became aware of it. Do you

14:10:45 11 know whether or not there was a lawsuit filed by Hearts

14:10:48 12 on Fire against E.R. Sawyer for use of Hearts on Fire's

14:10:52 13 trademark before you first learned of it?

14:10:55 14 A. Oh, oh. Well, I found out about it after that

14:11:00 15 occurred.

14:11:00 16 Q. You did?

14:11:01 17 A. Yes.

14:11:02 18 Q. Okay. And you had no idea prior to that time

14:11:05 19 that E.R. Sawyer was using the Hearts on Fire trademark

14:11:09 20 to describe EightStar's goods?

14:11:12 21 A. No, absolutely not. Now I understand your

14:11:16 22 question.

14:12:00 23 (Whereupon, Exhibit 15 was marked for

14:12:00 24 identification.)

14:12:17 25 MR. SHERMAN: Q. I'll show you a two-page

14:12:20 1 document, bearing Bates stamp numbers E00040 to -41.  
14:12:26 2 And that's the Exhibit 15, and ask you if you can  
14:12:33 3 identify this.  
14:12:41 4 A. Identify it?  
14:12:42 5 Q. Yeah. What is this?  
14:12:44 6 A. This is an email to all dealers.  
14:12:46 7 Q. This is part of the infrequent --  
14:12:49 8 A. Yes.  
14:12:51 9 Q. -- updates you provide?  
14:12:53 10 A. It is.  
14:12:54 11 Q. Okay. So it's dated June 25th, '04, right?  
14:13:02 12 A. Dated June 25th, '04, yes.  
14:13:06 13 Q. And you're describing in part the lawsuit  
14:13:15 14 against E.R. Sawyer and the resolution of that lawsuit;  
14:13:18 15 is that fair?  
14:13:26 16 A. I believe that is fair. Yes.  
14:13:37 17 Q. Now, in the paragraph that begins, "It was  
14:14:13 18 common in Doug's store to tell people about our  
14:14:16 19 perfectly cut diamonds and crow about them in ads." Do  
14:14:19 20 you see that?  
14:14:20 21 A. I do.  
14:14:21 22 Q. And then it says, "However, his web master, in  
14:14:23 23 order to have some samples of his work to show people,  
14:14:26 24 put these words up (the most perfectly cut diamonds in  
14:14:29 25 the world)." Do you see that?

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14:24:22 1 Q. Okay. So then in June of 2004, June 26th,  
14:24:26 2 you're passing on an email that -- to your dealers which  
14:24:30 3 basically, do I have it right, that your understanding  
14:24:35 4 of this was that there was no change in the status of  
14:24:37 5 that action?

14:24:43 6 A. "No further postings on the status of the  
14:24:49 7 case." Yeah, I would agree with that.

14:25:11 8 Q. The Jewelry Source has been an authorized  
14:25:18 9 EightStar retailer, correct?

14:25:20 10 A. Has been?

14:25:21 11 Q. Is.

14:25:21 12 A. And continues to be, yes.

14:25:26 13 Q. Do you know whether or not The Jewelry  
14:25:28 14 Source's web site has a link to EightStar's web site?

14:25:34 15 A. I don't know that.

14:26:39 16 (Whereupon, Exhibit 17 was marked for  
14:26:39 17 identification.)

14:26:48 18 MR. SHERMAN: Q. I'm going to show you what's  
14:26:50 19 been marked as Exhibit Number 17, and ask you if you  
14:26:59 20 can -- if you recognize this as a page from The Jewelry  
14:27:04 21 Source web site.

14:27:26 22 A. If I recognize this as from The Jewelry  
14:27:28 23 Source?

14:27:29 24 Q. Right.

14:27:30 25 A. Yes, I would say so, yes.

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14:27:33 1 Q. Okay. And you see there's a date at the  
14:27:38 2 bottom which would indicate the print date of 7/20/04.

14:27:45 3 A. Uh-huh.

14:27:45 4 Q. Now, in the third paragraph it says, "At The  
14:27:50 5 Jewelry Source, you'll find the world's most perfectly  
14:27:52 6 cut diamond: The EightStar." Do you see that?

14:27:56 7 A. I do.

14:27:59 8 Q. And when were you first aware that The Jewelry  
14:28:02 9 Source was using the Hearts on Fire trademark to -- in  
14:28:10 10 connection with the promotion of EightStar's goods?

14:28:13 11 A. When was I first aware that The Jewelry Source  
14:28:15 12 was using these words that appear here in conjunction  
14:28:20 13 with -- I'm sorry. Say that again, please.

14:28:22 14 Q. When were you first aware that The Jewelry  
14:28:24 15 Source was using Hearts on Fire's trademarked phrase to  
14:28:28 16 promote EightStar's goods?

14:28:30 17 A. When she was warned not to do it.

14:28:33 18 Q. Had no idea about it beforehand?

14:28:35 19 A. That is correct. I had no idea about it  
14:28:36 20 beforehand.

14:28:37 21 Q. And this is now just a couple of months after  
14:28:41 22 the E.R. Sawyer matter, right? We just looked at some  
14:28:45 23 documents that were from May of '04.

14:28:49 24 A. That's right.

14:28:50 25 Q. Resolution of that matter. Do you remember we

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14:28:53 1 looked at an email that was June of '04 where you sent  
14:28:57 2 out an email to your dealers about the resolution of  
14:28:59 3 that one. Do you remember that?

14:29:01 4 A. I do.

14:29:01 5 Q. And now it's July of 04, right?

14:29:04 6 A. (Nods head.)

14:29:05 7 Q. And you're saying that you have no idea of the  
14:29:07 8 use of Hearts on Fire trademarked phrase before you  
14:29:12 9 learned that they had been warned by Hearts on Fire; is  
14:29:16 10 that right?

14:29:16 11 A. That's correct.

14:29:18 12 Q. By the way --

14:29:19 13 A. Yeah.

14:29:20 14 Q. Right after it, it refers to the EightStar and  
14:29:23 15 then it's got a little TM.

14:29:26 16 A. Uh-huh.

14:29:26 17 Q. That's an improper designation for EightStar;  
14:29:29 18 is that right? I mean the EightStar name is a  
14:29:33 19 registered trademark, is it not?

14:29:37 20 A. It is.

14:29:38 21 Q. So in other words you would use the little R,  
14:29:42 22 wouldn't you?

14:29:43 23 A. I would.

14:29:43 24 Q. And you never monitor, or nobody at your  
14:29:47 25 company ever monitors the use of EightStar materials



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14:35:08 1 do, which ones do and which ones don't.

14:35:13 2 (Whereupon, Exhibit 18 was marked for  
14:35:13 3 identification.)

14:35:24 4 MR. SHERMAN: Q. I'll show you what's been  
14:35:25 5 marked Exhibit 18, a two-page document. Do you  
14:35:40 6 recognize this as a couple of pages from the Grimball  
14:35:44 7 web site?

14:35:49 8 A. I'm going to have to take your word that  
14:35:51 9 that's what it is. I've never seen this before, but  
14:35:53 10 I --

14:35:54 11 Q. I'll represent that it is.

14:35:56 12 A. Very good.

14:35:56 13 Q. And you see the date 10/14/2004?

14:36:00 14 A. I do.

14:36:01 15 Q. Now, you see on the Grimball web site it has  
14:36:13 16 various references to different, you know, different  
14:36:17 17 links essentially, right, in the first page?

14:36:23 18 A. So these are links to other web sites, you  
14:36:25 19 mean?

14:36:25 20 Q. Do you understand that to be -- that's what it  
14:36:27 21 is?

14:36:32 22 MR. PHILLIPS: Do you understand his question?

14:36:33 23 THE WITNESS: Not exactly. I think a link to  
14:36:36 24 me is when you go to somebody else's web site. Is that  
14:36:39 25 what you mean?

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14:36:41 1 MR. SHERMAN: Q. Okay. Now do you see where  
14:36:43 2 it says, "EightStar Diamonds. The most perfectly cut  
14:36:46 3 diamonds in the world. Only 2000 are cut each year"?

14:36:50 4 A. I see that.

14:36:51 5 Q. And do you know how it is that Mr. Grimball  
14:36:57 6 refers to EightStar diamonds as the most perfectly cut  
14:37:00 7 diamonds in the world?

14:37:01 8 A. I can't imagine why he would have done that,  
14:37:03 9 no.

14:37:04 10 Q. Okay. You have no idea, no idea until -- when  
14:37:07 11 was it that you first learned that Grimball was  
14:37:11 12 referring to EightStar diamonds as the most perfectly  
14:37:14 13 cut diamonds in the world?

14:37:16 14 A. When he was notified by Hearts on Fire not to  
14:37:18 15 do that.

14:37:19 16 Q. And this is now just a couple months after The  
14:37:21 17 Jewelry Source, right?

14:37:23 18 A. I don't know. Was it?

14:37:24 19 Q. Well, we just looked at the documents which  
14:37:26 20 were July of '04.

14:37:29 21 A. Okay. Then, yes.

14:37:32 22 Q. And then the second page refers to this as  
14:37:41 23 "Links"?

14:37:43 24 A. Right.

14:37:44 25 Q. And then, again, "The most perfectly cut

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14:37:47 1 diamonds in the world. Only 2000 are cut each year.

14:37:51 2 EightStar Diamonds."

14:37:54 3 A. Obviously, he didn't consult with me. Had he,  
14:37:57 4 I would have said, put "what every diamond dreams of  
14:38:02 5 being." That's our trademark.

14:38:04 6 Q. He said that right next to EightStar, "What  
14:38:06 7 every diamond dreams of being."

14:38:09 8 A. He doesn't say that. That's actually --

14:38:10 9 Q. That's yours.

14:38:11 10 A. That's a piece of our artwork he's using.  
14:38:13 11 Where it says, "The most perfectly cut diamonds in the  
14:38:16 12 world," had he asked me if that was an okay thing to do,  
14:38:22 13 I would have said absolutely not, we have a trademark,  
14:38:25 14 use ours.

14:38:26 15 Q. So it's your testimony you had no idea about  
14:38:29 16 this until you learned he had been sued?

14:38:31 17 A. That is correct.

14:38:41 18 Q. Did you have any discussion with Grimball  
14:38:42 19 after action was brought against him for use of the  
14:38:47 20 Hearts on Fire trademark?

14:38:51 21 A. Each one of the three people that you've  
14:38:54 22 referenced called me, and I had discussions with all  
14:38:57 23 three of those people, including Berkeley Grimball, yes.

14:39:00 24 Q. Do you recall the substance of what you said  
14:39:02 25 to him, what he said to you?